

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission
On Its Own Motion

-vs-

Consumers Gas Company

06-0744

Reconciliation of revenues collected under :
Gas adjustment charges with actual costs :
Prudently incurred. :

**REPLY BRIEF
OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION**

NOW come the Staff witnesses of the Illinois Commerce Commission ("Staff"), by and through their undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submit their Reply Brief in the instant proceeding.

I. INTRODUCTION

Initial Briefs ("IB") were filed on July 22, 2010, by Consumers Gas Company ("Consumers" or "Company") and Staff. Staff's Initial Brief provides a narrative of Staff's analyses, conclusions, proposed adjustments, and other requested relief. Staff's positions have not changed. In the interest of brevity, Staff will not repeat all of the issues and arguments previously addressed in Staff's Initial Brief. Thus, the omission of a response to an argument that Staff previously addressed simply means that Staff

stands on the position taken in Staff's Initial Brief because further or additional comment is neither needed nor warranted.

Staff's adjustments in this proceeding total \$523,660 consisting of \$46,955 included in the Company's originally filed reconciliation and \$476,705 in additional adjustments as a result of Staff's review. These adjustments and their sources are set forth in the table identified as ADJUSTMENTS to PGA RECONCILIATION in Staff's Initial Brief. (Staff IB, p. 4) As Staff's position has not changed from its Initial Brief, the table summarizing Staff's position is not presented again. Again, because Staff's position has not changed from its Initial Brief, Staff has not presented a revised Appendix A. Appendix A in the Initial Brief accurately presents Staff's position. (Staff IB, App. A)

Staff had separated issues into uncontested and contested in its Initial Brief based on its understanding of the Company's position through the Company's testimony and data request responses. (See Staff IB, pp. 6, 8) In its Initial Brief, however, the Company made its first declarative statement of which issues it was contesting. (See Co. IB, p. 5) For clarification, Staff offers the following table which divides the issues into "Uncontested" and "Contested" columns. This table is a restatement of the "DISPOSITION of ADJUSTMENTS" table from Staff's Initial Brief. (Staff IB, pp. 5-6) The adjustments presented in the following table are identical to the adjustments presented in Staff's initial brief.

DISPOSITION of ADJUSTMENTS					
Line No.	Description	Uncontested	Contested	Total	Source
	<u>To 2006 PGA Reconciliation</u>				
1	Staff Pricing Adjustment	\$ (5,649)		\$ (5,649)	ICC Staff Exhibit 1.0, Schedule 1.04, Column C, Line 13
2	Staff Hedging Adjustment - 2006		(85,002)	(85,002)	ICC Staff Exhibit 3.0, p. 24
3	Staff "Locked-in" Prices Adjustment		(19,274)	(19,274)	ICC Staff Exhibit 3.0, p. 23
4	Staff Transportation Adjustment	(3,411)		(3,411)	ICC Staff Exhibit 1.0, Schedule 1.05, Column F, Line 10
5	Staff Storage Charge Adjustment	(866)		(866)	ICC Staff Exhibit 5.0, Schedule 5.03, Column M, Line 14
6	Total Adjustments for Imprudence			\$ (114,202)	Sum Lines 1 through 5
7	Company Filing Error	(6,330)		(6,330)	ICC Staff Exhibit 1.0, Schedule 1.03, Column D, Line 6
8	Total Staff Adjustments to 2006 PGA			\$ (120,532)	Line 6 + Line 7; agrees with ICC Staff Exhibit 5.0, Schedule 5.01, Column E, Line 14
9	Correcting Adjustments	(523)		(523)	ICC Staff Exhibit 5.0, Schedule 5.01, Column C, Line 14
10	Commission Ordered 2005 Factor O	(25,431)		(25,431)	ICC Staff Exhibit 5.0, Schedule 5.01, Column D, Line 14
11	Company Proposed 2006 Factor O	(46,955)		(46,955)	Company Statement 1, Line 14
12	2006 PGA Reconciliation Factor O	\$ (89,165)	\$ (104,276)	\$ (193,441)	Sum Lines 8 through 11; agrees with ICC Staff Exhibit 5.0, Schedule 5.01, Column F, Line 14
	<u>To 2007 PGA Reconciliation</u>				
13	Staff Pricing Adjustment - May		\$ (2,512)	\$ (2,512)	ICC Staff Exhibit 1.0, Schedule 1.04, Columns C, Line 12
14	Staff Pricing Adjustment - June		1,622	1,622	ICC Staff Exhibit 1.0, Schedule 1.04, Column D, Line 12
15	Staff Transportation Adjustment - May		(1,517)	(1,517)	ICC Staff Exhibit 1.0, Schedule 1.05, Column F, Line 9
16	Staff Transportation Adjustment - June		(4,884)	(4,884)	ICC Staff Exhibit 1.0, Schedule 1.05, Column F, Line 17
17	Staff Hedging Adjustment - 2007		(322,928)	(322,928)	ICC Staff Exhibit 7.0, p. 11
18	Total Adjustments for Gas in Storage		\$ (330,219)	\$ (330,219)	Sum Lines 13 through 17
19	Total Disposition of Adjustments	\$ (89,165)	\$ (434,495)	\$ (523,660)	Line 12 + Line 18

II. RESPONSE TO CONSUMERS

A. Adjustments for 2007

All of Staff's adjustments for imprudent pricing, transportation and hedging involve gas purchased in 2006. However, some of the purchases were for gas in storage. Thus, the adjustments will not impact PGA gas costs until the gas is withdrawn and delivered to customers. Delivery of the gas in question occurred in both 2006 and 2007. Therefore, as illustrated in the table above, some of the adjustments are to the 2006 PGA costs; some of the adjustments will be applied to the 2007 PGA costs. Staff is not seeking a refund of the 2007 costs in this proceeding. But, since the transactions occurred in 2006, Staff analyzed them in this proceeding. It would be redundant to require the whole analysis to be repeated in 2007.

B. Standard for Prudent Purchases

Consumers had several contracts in which Consumers purchased gas from Egyptian on one date, but the gas was delivered on a later date. These are the hedging transactions. In addition to noting that they did not conform to the GSA and that Consumers made several errors in calculating prices, Staff also concluded these purchases were imprudent because Consumers did not offer any evidence that it considered any alternative hedging methodologies, even in the face of Dr. Rearden's analysis for Staff. Staff's conclusion was based upon the "... standard of care which a reasonable person would be expected to exercise under the circumstances encountered by [the Company] at the time decisions had to be made." (220 ILCS 5/9-220)

The Company instead argues that “Staff is using a standard containing an irrebuttable presumption that any hedging agreement between Consumers and its affiliate, Egyptian, is imprudent regardless of whether the transaction is prudent.” (Co. IB, p. 7) Dr. Rearden did indicate his strong preference that hedges not take place among affiliates. However, he stated that Staff proposed a disallowance for the transactions, not because they were hedges, but because they were improper and imprudent transactions. (See Staff Ex. 7, p. 5) Dr. Rearden’s testimony does not reflect that he was applying an irrebuttable presumption on the transactions because they were with an affiliate. Dr. Rearden had “gone to great lengths” (Co. IB, p. 7) to explain that on the days the transactions took place, the prices Consumers paid were excessive relative to the prices it could have paid under other purchasing programs. (See Staff Ex. 3.0, pp. 12-13, Staff Ex. 7.0, pp. 6-7) There is nothing in his testimony to indicate that he applied a standard with an irrebuttable presumption.

Utilities are required to receive Commission approval prior to entering into transactions with affiliated interests. (220 ILCS 5/7-101(3)) The Company’s argument that “there is absolutely no requirement contained in [the General Services Agreement (“GSA”)] which would prohibit a hedging agreement between Consumers and Egyptian (Co. IB, p. 8), ignores the Section 7-101 mandate. This is not a matter of interpreting the contract between Consumers and Egyptian, this is an inquiry as to whether the Commission, when it approved the GSA, consented to hedging between the affiliates. The same individual manages Consumers and Egyptian, and there is a conflict of interest between them. (See Staff IB, pp. 8-13) The requirement for Commission

approval for transactions between affiliates is directed at just this type of situation. The GSA does not provide for hedging transactions. The Company has provided no evidence, and Staff is aware of none, that hedging was contemplated at the time the GSA was approved. This leads to the conclusion that the Commission did not consent to hedging transactions. Furthermore, the GSA provided a specific pricing formula for transactions. That formula was not adhered to for the hedging transactions.

B. Hedging Agreement

The majority of the Company's arguments supporting its assertions that the hedging transactions were prudent were addressed in Staff's Initial Brief. (See Staff IB, pp. 14-26) Consumers states that "NYMEX (New York Mercantile Exchange) is one of the largest exchanges... in the world. It is the apex of competitive pricing ..." (Co. IB, p. 10) However, this ignores Article IV of the GSA, which provides the method by which the price is to be determined. (See Staff IB, pp. 16-17) Gas is to be priced at "\$0.05 MMBTU less than the gas purchased from Buyer's primary gas source, J.D. Woodward Marketing or other gas supplier, PLUS the transportation charges equal to the amount charged by TETCO to transport gas to the delivery point." (*Id.*) The use of the NYMEX as a standard is not consistent with what the Commission approved.

Equally unhelpful are the references to what has been allowed by the Commission for the four downstate public utilities (MidAmerican ("MEC") and the three Ameren sister companies). (Co. IB, p. 11) None of the orders cited by the Company discuss the NYMEX. Further, none of the orders indicate that hedging was conducted through an affiliate or pursuant to an affiliate agreement approved by the Commission.

Thus, there is no reason to believe that the facts of any of those proceedings bear any relationship to the case at hand.

Aside from mis-stating and misrepresenting the Commission's Orders with respect to MEC's and Ameren's PGAs, Consumers also incorrectly attributes certain statements to Staff. In particular, Consumers indicates "Staff has always discussed as a program whereby supplies are secured from different sources in order to avoid wide price variations." (Co. IB, p. 12) However, Consumers provided no citation for this statement and Staff is unable to locate it within the record of this proceeding. Further, Consumers indicates that Mr. Robinson "...felt it would be in the best interests and prudent to enter into this hedging agreement with Egyptian...". (*Id.*) Consumers also failed to provide citations for this statement as well. In fact, Consumers fails to provide any cites at all to the record for the entire first paragraph on page 12 of its Initial Brief. As Consumers has provided no basis in the record for these arguments, they should be disregarded.

D. Locked in Prices and UGM Contracts

Staff's arguments above and in its Initial Brief fully respond to the Company's arguments regarding its UGM contracts. (See Staff IB, pp. 29-41)

III. CONCLUSION

For the foregoing reasons, Staff of the Illinois Commerce Commission respectfully requests that the Commission adopt Staff's reconciliation of revenues collected under Consumers' purchased gas adjustment clause with actual costs as reflected Appendix A of Staff's Initial Brief, and order Consumers to refund \$193,441, as

a Factor O refund, in the first monthly PGA filed after the date of the Final Order in the instant proceeding.

Staff also requests that the Commission order Consumers to reduce 2007 gas costs by \$330,219 for pricing and hedging adjustments. In addition, Staff requests that the Commission order Consumers to file a report within 60 days describing in detail how Consumers will improve the quality of its supporting documentation.

Finally, Staff request that the Commission, again, order Consumers to provide thorough and complete responses to Staff data requests.

August 11, 2010

Respectfully submitted,

A handwritten signature in cursive script, reading "Janis Von Qualen", positioned above a horizontal line.

JANIS VON QUALEN
Staff Counsel

JANIS VON QUALEN
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 785-3402
Fax: (217) 524-8928
jvonqual@icc.illinois.gov